THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION Nos.5622 and 5628 of 2003

Dated:20.07.2007

Between:

B.Shanker, S/o.Poshetty.

…Petitioner

and

State of A.P., rep.by its Secretary,
Social Welfare Department,
Secretariat at Hyderabad, and others.

…Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

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COMMON ORDER:

Writ Petition No.5622 of 2003 is filed challenging the orders of the Government in G.O.Ms.No.18, dated 05.03.2003, and Writ Petition No.5628 of 2003 is filed challenging the orders of the Government in G.O.Ms.No.23, dated 18.03.2003. In both the cases, the petitioner and the respondents are the same, and the background of the cases, except the particulars of the land, is also the same.

The petitioner purchased the land admeasuring Acs.4.25 guntas in Survey No.21 situated at Belgaon Village, Asifabad Mandal in Adilabad District, under registered sale deed dated 23.04.1969. He also purchased an extent of Acs.9.36 guntas in Survey No.20 situated in the same Village from the same vendor under registered sale deed 23.04.1969. The third respondent initiated action purportedly under Section 3(2) of the Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959 (for short 'the Regulation') against the petitioner. These cases, being Case No.TWA1/1199/78, in respect of land in Survey No.21, and Case No.TWA1/1198/78, in respect of land in Survey No.20, were initiated *suo motu.* By two separate orders passed on 04.09.1981, the third respondent ordered ejectment of the petitioner and restoration of land to Sri Kanaka Somu Goud, a member of Scheduled Tribe, who is resident of Adlakotari Village, and insofar as the land in Survey No.20 is concerned, and to restore the same to Sri Kumra Arju, resident of Belgaon Village, in other case. Aggrieved

by these orders, the petitioner preferred two separate appeals before the Agent to Government, Adilabad, who by orders dated 14.05.1990 and 16.06.1990 dismissed the appeals filed against the orders of the third respondent in respect of the land in Survey Nos.21 and 20, respectively. The petitioner then preferred revision petitions under Section 6 of the Regulation, when the Government rejected the revisions by the impugned G.Os.

Counter affidavits are filed in both the Writ Petitions separately. In the counter affidavit filed in W.P.No.5622 of 2003 it is stated that Sri Sedmaki Samu, a tribal, was shown as pattadar of the land as per Khasra Pahani of 1954-1955 situated in Survey No.21, and Sri Narhari Goud was shown as occupant due to waiwat kabja (adverse possession). In 1976-1977 pahani, in Column No.11 the petitioner is recorded as occupant, and in Column No.12 as pattadar. It is also alleged that the petitioner did not file any document in support of his claim before the third respondent, and therefore, the matter was decided based on the material. A further reference is made to Section 47 of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950, and Rule 42 of the Notified Tribal Areas Rules, in support of the contention that any transfer of land by a tribal in favour of a non-tribal without permission of the Agent to Government is illegal. The transfer was effected without such permission, and therefore, such transfer in favour of Narhari Goud in Khasra Pahani of 1954-1955 is unauthorized.

In the counter affidavit filed in W.P.No.5628 of 2003 similar contentions are raised. It is stated that as per Khasra Pahani of 1954-1955 Sri Sidam Chinnu, is recorded as pattadar in respect of the land in Survey No.20 and Narhari Goud as occupant due to waiwat kabja (adverse possession). The other contentions and averments are similar to the counter affidavit filed in the other Writ Petition.

Learned Counsel for the petitioner submits that when the land is transferred from a non-tribal to a non-tribal prior to coming into force of Regulation I of 1970 amending Regulation No.I of 1959, the third respondent has no jurisdiction to initiate any action under Section 3(2) of the Regulation. He placed reliance on the decision of the Supreme Court in **Deputy Collector v. S.Venkata Ramanaiah**[1]. He also submits that the pahanies from 1954-1955 continuously for a period of fifteen years show the name of Narhari Goud as occupant of the land and that when the petitioner purchased the land from Narhari Goud, it should be taken that the petitioner has rebutted the presumption that the land belonged to a tribal. **Opposing** the Writ Petition, the learned Government Pleader for Social Welfare submits that pahani for 1954-

1955 has shown a tribal as owner. But, the name of Narhari Goud was found in the occupant column and the same was done without the permission of Agent or Assistant Agent to the Government under Rule 42 of the Notified Tribal Areas Rules, and therefore, such entry or transfer of land from a tribal to Narhari Goud is itself unauthorized and does not confer any right on him to transfer his right under registered sale deed in favour of the petitioner.

In G.O.Ms.No.18, the Government does not advert to various aspects, which are sound in the counter affidavit filed by the Assistant Secretary to Government. Except stating that there was a transfer in favour of Narhari Goud in 1954-1955, other aspects are not even considered. It is well settled that a quasi judicial authority or statutory authority should sustain or support such an order for the reasons disclosed in the order and such reasons cannot be supplemented by filing counter affidavits in the Courts (see **Mohinder Singh Gill v. The Chief Election Commissioner**[2]). On this ground alone, this Court is of considered opinion that the impugned orders in both the Writ Petitions must be set aside and the matters should be remanded to the Government. In these cases the questions, which require consideration by the revisional authority are i) whether there was an absolute right vested in Narhari Goud by virtue of adverse possession (waiwat kabja)? If the answer to this question is in the affirmative, the land cannot be treated as the one belonging to the tribal. ii) Whether the entry of name of Narhari Goud in the occupant column in Khasra Pahani of 1954-1955 by concerned revenue officials without necessary permission under Rule 42 of the Notified Tribal Areas Rules (formulated under Section 4 of the Tribal Areas Regulation 1359 Fasli) amounts to transfer of land by tribal to non-tribal? iii) Whether the primary authority or appellate authority considered these aspects while ordering ejectment of the petitioner?

While considering the above questions, needless to mention that the Government cannot rely on the parawise remarks or comments sent by the lower authorities, and they have to independently evaluate and appreciate the evidence available in the record that may be produced by the primary authority and/or the petitioner.

In the result, G.O.Ms.No.18, Social Welfare Department, dated 05.03.2003, and G.O.Ms.No.23, Social Welfare (LTR) Department, dated 18.03.2003, are set aside. Both the cases are remanded to the Government for fresh disposal after duly considering the points that arise for consideration as indicated hereinabove or other points that are deemed fit. The Government may pass appropriate orders after giving an opportunity of being heard to the petitioner, within a period of

eight (8) weeks from the date of receipt of a copy of this order.

The Writ Petitions are accordingly allowed. There shall be no order as to costs.

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(V.V.S.RAO, J)

20.07.2007
vs

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[1] AIR 1996 SC 224

[2] AIR 1978 SC 851